

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANTWAREN ROBERTS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS; T. RODIN; E. NIXON;
STEVEN HOLDER; E. PEREZ; E.
RAMOS; G. CALDERON; B. CAMACK;
DANIEL SOTO; M. BLANKENSHIP; A.
RODRIGUEZ; RON HUGHES; K.
SMITH; TODD LANSFORD; ARBI
MASHI KAMALI; DANNY LEVYA;
DOES 1-50; CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION; JERRY
BROWN; JERRY BEARD; MATTHEW
CATE,

Defendants.

Case No. 2:13-cv-07461-ODW(JCx)

**ORDER GRANTING EX PARTE
APPLICATION FOR
ENLARGEMENT OF TIME TO
FILE RESPONSE TO FIRST
AMENDED COMPLAINT [38]**

On January 27, 2014, Defendant T. Rodin filed an Ex Parte Application for Enlargement of Time to Respond to First Amended Complaint. (ECF No. 38.) Deputy Attorney General Danielle R. Hemple represents most of Defendants, but she determined that a conflict of interest prevented her from further representing Rodin. (Hemple Decl. ¶ 5.) Hemple did not elaborate on the nature of the conflict. But Hemple states that the Office of the Attorney General obtained conflict counsel to represent Rodin. (*Id.* ¶ 6.) Rodin therefore requests that the Court allow him an

1 additional 15 days to respond to Plaintiff Antwaren Roberts's First Amended
2 Complaint.

3 Roberts opposes the Ex Parte Application. (ECF No. 42.) Rodin argues that
4 under Federal Rule of Civil Procedure 6(b), Rodin filed his extension-of-time
5 application after court hours on the date his response was due—January 27, 2014—
6 and therefore the Court should deny his Application as untimely.

7 Roberts filed his First Amended Complaint on November 8, 2013. (ECF
8 No. 9.) On December 5, 2013, Roberts served Rodin. (ECF No. 41; Lacher Decl.
9 ¶ 4.) The parties then stipulated to allow Rodin and other Defendants until January
10 27, 2014, to respond to the First Amended Complaint—a stipulation which the Court
11 accepted. (ECF Nos. 11, 12.)

12 Rodin filed then this Ex Parte Application at 5:52 p.m. PST on January 27,
13 2014, seeking an additional 15 days to respond. (ECF No. 38.)

14 Rule 6(b) permits a court to extend time to do an act for good cause, among
15 others, “if a request is made[] before the original time or its extension expires.” Fed.
16 R. Civ. P. 6(b)(1)(A). Rule 6 also states that when a period is stated in days, one
17 determines the end date by including the last day of the period. *Id.* (a)(1)(C). The
18 Rule defines “last day” for electronic filing as “midnight in the court’s time zone,”
19 unless otherwise affected by statute, local rule, or court order. *Id.* (4)(A).

20 The Central District of California Local Rules do not set a different standard; in
21 fact, they echo the same timeliness requirement. C.D. Cal. L.R. 5-4.6.1 (“Unless
22 otherwise provided by order of the assigned judge, all electronic transmissions of
23 documents *must be completed prior to midnight* Pacific Standard Time or Pacific
24 Daylight Time, whichever is in effect at the time, in order to be considered timely
25 filed on that day.” (emphasis added)).

26 Rodin filed his request at 5:52 p.m. on January 27, 2014—the last day for him
27 to respond to the First Amended Complaint per the parties’ stipulation. Contrary to

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1 Roberts's argument, Rodin timely made the response deadline by six hours and 8
2 minutes.

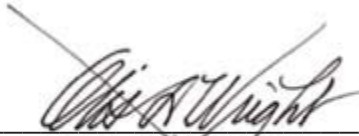
3 It is also curious that Roberts seeks to hew so closely to the time rules when he
4 filed his own opposition to the Ex Parte Application late. This Court's own Rules
5 require that a party file an opposition to an ex parte application, if any, within 24
6 hours. FAQs about Judges' Procedures and Schedules ¶ VII.C, *available at*
7 [http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/2fb080863c88ab47882567c9007f](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/2fb080863c88ab47882567c9007fa070/d7596199bbd33e87882579f5006b0828?OpenDocument)
8 [a070/d7596199bbd33e87882579f5006b0828?OpenDocument](http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/2fb080863c88ab47882567c9007fa070/d7596199bbd33e87882579f5006b0828?OpenDocument). Since Rodin filed his
9 Ex Parte Application at 5:52 p.m. on January 27, 2014, Roberts had until 5:52 p.m. on
10 January 28, 2014, to oppose. But Roberts filed his Opposition at 6:52 p.m.—one hour
11 late. (ECF No. 42.)

12 But the Court need not formalistically consume itself with counting minutes and
13 hours in order to decide this Ex Parte Application. Hemple indicated that she cannot
14 represent Rodin due to a conflict of interest, and the Office of the Attorney General
15 has already retained conflict counsel. It would of course be the height of folly for this
16 Court to require Hemple to violate the ethics rules and continue to represent Rodin—
17 especially when Roberts has not indicate the situation is any different than Rodin
18 represents.

19 The Court therefore **GRANTS** Rodin's Ex Parte Application. (ECF No. 38.)
20 Rodin alone shall have until Tuesday, February 11, 2014, to answer or otherwise
21 respond to Roberts's First Amended Complaint. The Court will not grant any further
22 extensions absent compelling circumstances.

23 **IT IS SO ORDERED.**

24
25 January 29, 2014

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE